

**§ 308.179 Settlement negotiations.**

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary with a copy to the administrative law judge a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 30 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62102, Nov. 16, 1999]

**§ 308.180 Further proceedings.**

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

**§ 308.181 Recommended decision.**

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the appli-

cant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

**§ 308.182 Board of Directors action.**

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

**§ 308.183 Payment of awards.**

An applicant seeking payment of an award made by the Board of Directors shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.